

## EXHIBIT 2

**From:** [Peter Magic](#)  
**To:** [Jared Bunker](#); [Apple Masimo Service](#)  
**Cc:** [Moore, David E.](#); [Palapura, Bindu A.](#); [Jack Phillips](#); [Lit MASIMOL.1594L](#); [Greenfield, Leon](#); [Milici, Jennifer](#); [Kerri-Ann Limbeek](#); [Megan C. Haney](#); [Vote, Dominic](#); [Ford, Mark](#); [Lit MASIMOL.1593L](#); [Jordan Malz](#); [Brian Horne](#)  
**Subject:** RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules  
**Date:** Monday, February 20, 2023 1:16:37 PM

---

Thanks Jared. On the call, let's cover the following.

- Masimo's motion to consolidate cases
- Apple's forthcoming motion to stay discovery relating to Masimo's antitrust and false advertising counterclaims (Counts I-VI)
- 26(f) report drafts

Thanks,  
Peter  
Office: 415-573-1899  
Cell: 646-217-2087

---

**From:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Sent:** Saturday, February 18, 2023 8:18 AM  
**To:** Peter Magic <[PMagic@desmaraissllp.com](mailto:PMagic@desmaraissllp.com)>; Apple Masimo Service <[AppleMasimoService@desmaraissllp.com](mailto:AppleMasimoService@desmaraissllp.com)>  
**Cc:** Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraissllp.com](mailto:KLimbeek@desmaraissllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Jordan Malz <[JMalz@desmaraissllp.com](mailto:JMalz@desmaraissllp.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>  
**Subject:** [Ext] RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

**\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

---

I sent a meeting invite for 2/22 at 5pm ET. Thank you.

**Jared Bunker**  
Partner  
949-721-2957 Direct  
**Knobbe Martens**

---

**From:** Peter Magic <[PMagic@desmaraissllp.com](mailto:PMagic@desmaraissllp.com)>  
**Sent:** Friday, February 17, 2023 6:16 PM

**To:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>; Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>  
**Cc:** Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraisllp.com](mailto:KLimbeek@desmaraisllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>  
**Subject:** RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

Jared,

Apple is available at the following times.

- 2/22 at 5pm ET
- 2/23 between 3:30 and 5pm ET

Thanks,  
Peter  
Office: 415-573-1899  
Cell: 646-217-2087

---

**From:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Sent:** Wednesday, February 15, 2023 2:13 PM  
**To:** Peter Magic <[PMagic@desmaraisllp.com](mailto:PMagic@desmaraisllp.com)>; Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>  
**Cc:** Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraisllp.com](mailto:KLimbeek@desmaraisllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>  
**Subject:** [Ext] RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

**\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

---

Counsel,

Defendants intend to file motions to consolidate the utility and design patent cases. Both sides have already discussed their positions on this issue, but we would like to meet and confer to ensure we satisfy our obligations under Local Rule 7.1.1. We believe the cases can be consolidated under Rule 42 because they involve the same parties, the same accused products, and many of the same patents, along with other common issues. We believe the cases should be consolidated at least through discovery and pre-trial because the overlapping issues mean a consolidated proceeding would be more efficient and cost-effective – for example, many of the same witnesses on the development of Masimo's W1 will likely be subject to deposition in both cases.

Please let us know your availability this week or early next week to confer about Defendants' contemplated motions.

Thank you,  
Jared

**Jared Bunker**  
Partner  
949-721-2957 Direct  
**Knobbe Martens**

---

**From:** Peter Magic <[PMagic@desmaraisllp.com](mailto:PMagic@desmaraisllp.com)>  
**Sent:** Tuesday, February 7, 2023 2:31 PM  
**To:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraisllp.com](mailto:KLimbeek@desmaraisllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>  
**Subject:** RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

Yes.

Peter  
Office: 415-573-1899  
Cell: 646-217-2087

---

**From:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Sent:** Tuesday, February 7, 2023 11:14 AM  
**To:** Peter Magic <[PMagic@desmaraisllp.com](mailto:PMagic@desmaraisllp.com)>  
**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack

Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraisllp.com](mailto:KLimbeek@desmaraisllp.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>

**Subject:** [Ext] RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

**\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

---

Peter, yes, that works for us. Could your side circulate a zoom link or dial-in?

**Jared Bunker**  
Partner  
949-721-2957 Direct  
**Knobbe Martens**

---

**From:** Peter Magic <[PMagic@desmaraisllp.com](mailto:PMagic@desmaraisllp.com)>  
**Sent:** Monday, February 6, 2023 4:52 PM  
**To:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraisllp.com](mailto:KLimbeek@desmaraisllp.com)>; Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>  
**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>  
**Subject:** RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

Jared,

Does Thursday at 2pm PT work for the defendants for a 26(f) conference in the Delaware cases?

Thanks,  
Peter  
Office: 415-573-1899  
Cell: 646-217-2087

---

**From:** Peter Magic <[PMagic@desmaraissllp.com](mailto:PMagic@desmaraissllp.com)>  
**Sent:** Monday, February 6, 2023 3:08 PM  
**To:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>; Kerri-Ann Limbeek <[KLimbeek@desmaraissllp.com](mailto:KLimbeek@desmaraissllp.com)>; Jordan Malz <[JMalz@desmaraissllp.com](mailto:JMalz@desmaraissllp.com)>  
**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraissllp.com](mailto:AppleMasimoService@desmaraissllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>  
**Subject:** RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

Jared,

Apple consents to a 1-week extension.

Thanks,  
Peter  
Office: 415-573-1899  
Cell: 646-217-2087

---

**From:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Sent:** Monday, February 6, 2023 11:32 AM  
**To:** Kerri-Ann Limbeek <[KLimbeek@desmaraissllp.com](mailto:KLimbeek@desmaraissllp.com)>; Jordan Malz <[JMalz@desmaraissllp.com](mailto:JMalz@desmaraissllp.com)>  
**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraissllp.com](mailto:AppleMasimoService@desmaraissllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>  
**Subject:** [Ext] RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

**\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

---

Counsel,

Defendants request a one-week extension to respond to Apple's motion to expedite and motion to sever/stay. Please let me know whether Apple consents.

Thanks,

Jared

**Jared Bunker**

Partner

949-721-2957 Direct

**Knobbe Martens**

---

**From:** Kerri-Ann Limbeek <[Klimbeek@desmaraisllp.com](mailto:Klimbeek@desmaraisllp.com)>

**Sent:** Thursday, February 2, 2023 10:04 AM

**To:** Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>; Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>; Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>

**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>

**Subject:** RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

Brian and Jared,

In preparation for the discussion regarding Apple's contemplated motion for expedited trial in the 1377/design case and the proposed schedule for that case, here are some additional details that we believe will facilitate the contemplated expedited schedule:

1. the proposed trial in eight months would be limited to liability, and damages would be bifurcated;
2. given the narrow scope of liability issues in the design case, Apple will propose discovery limits of 15 interrogatories, 30 requests for admission, and 35 hours for fact witness depositions per side; and
3. Apple believes that a liability trial could be limited to 8 hours of trial testimony per side, meaning that a full trial on liability could be completed in three days.

Additionally, as you will note, our proposed schedule does not include claim construction in the design case. This Court has not conducted claim construction proceedings in other design cases, and Apple believes that similarly here claim construction proceedings will not be required in this design case.

Thanks,

Kerri-Ann

---

**From:** Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>

**Sent:** Wednesday, February 1, 2023 7:47 PM

**To:** Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>; Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>

**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>

**Subject:** Re: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

Brian,

Yes, this Friday at 5 PM (Eastern) / 2 PM (Pacific) works.

I'll circulate a webex.

Best regards,  
Jordan

Jordan N. Malz  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-5497

---

**From:** Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>

**Sent:** Wednesday, February 1, 2023 4:07 PM

**To:** Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>; Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>

**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>

**Subject:** [Ext] RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

**\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

---

Jordan:

Masimo can confer this Friday at 2 PST/5 EST.

Let us know if that works for you.

Brian

---

**From:** Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>  
**Sent:** Wednesday, February 1, 2023 10:16 AM  
**To:** Brian Horne <[Brian.Horne@knobbe.com](mailto:Brian.Horne@knobbe.com)>; Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>  
**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>  
**Subject:** RE: Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

Hi Brian and Jared,

I write to follow up on my e-mail below requesting a meet and confer regarding the parties' contemplated motions and schedules. Would any of the dates and times proposed by Apple work? If not, can you please kindly provide alternative times of availability this week?

Thanks,  
Jordan

Jordan N. Malz  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-5497

---

**From:** Jordan Malz  
**Sent:** Monday, January 30, 2023 5:47 PM  
**To:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>; Lit MASIMOL.1593L <[LitMASIMOL.1593L@knobbe.com](mailto:LitMASIMOL.1593L@knobbe.com)>; Lit MASIMOL.1594L <[LitMASIMOL.1594L@knobbe.com](mailto:LitMASIMOL.1594L@knobbe.com)>; Jack Phillips <[JCP@PMHDELaw.com](mailto:JCP@PMHDELaw.com)>; Megan C. Haney <[mch@PMHDELaw.com](mailto:mch@PMHDELaw.com)>

**Cc:** Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>

**Subject:** Apple v. Masimo 1377 (D. Del.) and 1378 (D. Del.) -- Motions and Schedules

Jared,

Apple believes that it makes sense for the parties to meet and confer to discuss their respective visions for how the 1377/design and 1378/utility cases should proceed.

We understand that Masimo may be contemplating a motion to consolidate the 1377/design and 1378/utility cases. For its part, Apple is contemplating two different respective motions in the two different respective cases. In the 1377/design case, Apple is contemplating a motion for expedited trial. In the 1378/utility case, Apple is contemplating a motion (1) to sever Masimo's non-D.J. counterclaims (First through Sixteenth Counts) and (2) to stay Masimo's patent infringement counterclaims that are not already stayed under 28 U.S.C. § 1659 (Tenth, Twelfth, Fourteenth, Fifteenth, and Sixteenth Counts).

Apple looks forward to learning the bases for Masimo's contemplated motion and to discussing the bases for Apple's contemplated motions. Apple also looks forward to discussing scheduling issues and, to that end, attaches proposed schedules reflecting its current thinking for the 1377/design case and the 1378/utility case (assuming severance of Masimo's non-D.J. counterclaims), respectively. Please note that, because Apple intends to seek severance of Masimo's non-D.J. counterclaims (e.g., antitrust, false advertising, patent infringement, and state law counterclaims), Apple's proposed scheduling deadlines for the 1378/utility case apply solely to Apple's patent infringement claims and Masimo's declaratory judgment counterclaims.

While the parties' respective schedules unsurprisingly differ in view of the parties' differing visions, we believe there may be areas of common ground at least early in the schedule.

Apple requests a Local Rule 7.1.1 meet-and-confer this week to discuss the parties' respective motions and schedules. Would February 1 at 6:30 PM (Eastern) or February 2 at 4 PM (Eastern) work for Masimo? If not, please kindly provide alternative dates and times of availability this week.

Best regards,  
Jordan

Jordan N. Malz  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-5497

This email may contain confidential and privileged material for the use of the intended recipient. Any review, use, or distribution by anyone other than the addressee is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and delete all copies of this message.

NOTICE: This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

This email may contain confidential and privileged material for the use of the intended recipient. Any review, use, or distribution by anyone other than the addressee is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and delete all copies of this message.

NOTICE: This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

This email may contain confidential and privileged material for the use of the intended recipient. Any review, use, or distribution by anyone other than the addressee is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and delete all copies of this message.

NOTICE: This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

This email may contain confidential and privileged material for the use of the intended recipient. Any review, use, or distribution by anyone other than the addressee is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and delete all copies of this message.

NOTICE: This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

This email may contain confidential and privileged material for the use of the intended recipient. Any

review, use, or distribution by anyone other than the addressee is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and delete all copies of this message.

NOTICE: This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

This email may contain confidential and privileged material for the use of the intended recipient. Any review, use, or distribution by anyone other than the addressee is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and delete all copies of this message.